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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ROBERT CONTRERAS,

Plaintiff,

vs.

CITY OF LOS ANGELES; JULIO  
BENAVIDES; MARIO FLORES; and  
DOES 1 - 10, Inclusive,

Defendants.

Case No. CV11-01480 SVW (SHx)  
*Hon. Stephen V. Wilson; Crtm 6*

**DEFENDANTS' MEMORANDUM  
OF CONTENTIONS OF FACT AND  
LAW PURSUANT TO LOCAL RULE  
16-4 FOR PHASE 2 OF TRIAL**

PRE-TRIAL CONFERENCE

DATE: AUGUST 27, 2012

TRIAL: SEPTEMBER 18, 2012

**TO THIS HONORABLE COURT AND ALL PARTIES AND THEIR  
ATTORNEYS OF RECORD:**

Defendants MARIO FLORES AND JULIO BENAVIDES, hereby submit their  
Memorandum of Contentions of Fact and Law pursuant to Federal Rules of Civil  
Procedure, Rule 16 and Local Rule 16-4.

This memorandum of CONTENTIONS OF LAW AND FACT is being written  
prior to the court's rulings on motions in limine which were set for hearing at the Pre-  
Trial Conference.

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**FACTUAL CONTENTIONS:**

The court is familiar with the underlying facts of the incident. So they will not be reiterated.

Regarding the causation and damages phase Defendants state the following:

Plaintiff is a C-7 level tetrapalegic. He does not have the use of his legs and has some use of his right arm and hand and less use of his left arm and hand. Plaintiff is confined to a wheel chair.

Plaintiff did not avail himself to services offered to him while he was in state prison. Since his release from prison in September 2011, he has been receiving treatment at Rancho Los Amigos Hospital, an LA County facility, located in Downey California. Plaintiff has not paid for any treatment. He has not received bills for any medical treatment rendered since the incident. He is receiving Medicare and/or Medical benefits. Defendants assert their rights to the collateral source off set under Cal. Government Code section 985. If Plaintiff is pursuing costs for past medical care, any recovery should be limited to the amount actually paid and the provider must be reimbursed.

Plaintiff is medically in need of future medical services. The causation, nature and extent of his injuries and financial recovery are disputed. Initial expert reports were written during December 2011 in anticipation of trial during January 2012. In the ensuing 8 months, Plaintiff has undergone a surgery. Plaintiff has also attended and commenced physical therapy and vocational therapy. His ability to be more independent is growing.

As part of the calculation of damages, Plaintiff will be seeking compensatory damages from medical care for the rest of his life. He will be presenting information about his life expectancy. Defendants contend that under the jury instructions, namely CACI 3932 in considering one's life expectancy a person's health, habits, activities, lifestyle and occupation are relevant to a jury's determination of life expectancy.

Also, Defendants contend that Plaintiff's psychological make up as of the date of incident is part of the causation of his injuries and has an impact on his life expectancy.

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1 Plaintiff's use of street narcotics may have an effect on his compliance with a medical  
2 program and potential drug dosage and interactions.

3 **CLAIMS AND DEFENSES-- 16-4.1**

4 In the damage phase it is believed there are the following issues to be tried:

5 Causation of future cost of medical treatment and any pain;

6 Future costs of medical treatment reduced to present value; and

7 Any compensation for physical pain and suffering.

8 **DEFENSES:**

9 Defendants contend the jury will have to determine the following:

10 Causation of injury under 9<sup>th</sup> cir. Jury instruction 5.1

11 Did Plaintiff mitigate his damages under 9<sup>th</sup> cir. Jury instruction 5.3?

12 The reduction to present value of any award of future medical costs under 9<sup>th</sup> cir.  
13 Jury instruction 5.4?

14 The key facts will be the review of Plaintiff's medical history and the physical  
15 examinations in this case. His life history will play a factor in his life expectancy and  
16 causation of his injuries stemming from the incident.

17 Each side has a doctor to explain Mr. Contreras likely future medical needs and the  
18 reasons therefore. Each side will present the testimony of a Life Care Planner who  
19 articulated the reasonable medical needs and costs for Mr. Contreras' future care. Each  
20 side has designated an expert economist to calculate the present value of these future  
21 costs. Defendants intend to call Dr. Mohandie, a psychologist, who opines that Mr.  
22 Contreras fits the diagnostic criteria of a person with an anti-social personality disorder  
23 and is at a risk of a lower life expectancy as noted in his report.

24 **BIFURCATION OF ISSUES-- 16-4.3**

25 This is the 2<sup>nd</sup> phase of a bifurcated case.

26 **JURY TRIAL--16-4.4**

27 The parties have timely demanded a trial by jury.

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**ATTORNEYS FEES--16-4.5**

Should plaintiffs prevail, they could request attorneys fees under 42 USC 1988.  
Should Defendants prevail, they could request attorneys fees as well.

**ABANDONMENT OF ISSUES --16-4.5**

Defendants have been informed that Plaintiff is abandoning any claim for punitive damages against the officers.

Defendants have been informed that Plaintiff is not seeking emotional distress damages. However, the contours of what exactly Plaintiff is abandoning is not clear. Plaintiff is still maintaining a claim for "physical pain and suffering." Plaintiff also stated he is seeking damages for disfigurement and disability. However, at the pre-trial conference held on August 27, 2012, Plaintiff did not mention these as the type of damages being sought when asked by the court.

**OTHER MATTERS--16-8**

Defendants filed five motions in limine.

Plaintiff has filed five motions in limine as well.

The parties are working together to finalize witness lists, exhibit lists, a pre-trial conference order and substantive jury instructions and a verdict form.

DATED: August 29, 2012

Respectfully submitted,

**CARMEN A. TRUTANICH**, City Attorney  
**GARY GEUSS**, Chief Assistant City Attorney  
**CORY M. BRENT**, Supv. Assistant City Attorney

By                     /S/                      
**CRAIG J. MILLER**, Deputy City Attorney

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MARIO FLORES